

(1) If a report is filed before the end of the crop year, an updated crop report must be filed within 90 calendar days from the end of the crop year to supplement the original report;

(2) If the report is for any annual or biennial crops where production continued or could have continued beyond the period covered in the reports otherwise filed under this section, an additional report of production must be filed within 30 days of the end of the last countable production for the covered crop or 30 days after the last date on which such production could have been obtained, whichever is later.

(3) A failure to file an adequate report where a report is required by this section may result in the producer being treated as having a zero yield capability for the crop year involved for purposes of constructing a crop history. Alternatively, the Deputy Administrator may assign another sanction for that failure. In addition to other sanctions as may apply, a failure to file such reports may be grounds for denial of a claim. The Deputy Administrator may adjust crop histories as determined appropriate to create, to the extent practicable, an appropriate crop history for loss computation purposes.

(4) Such reports as are provided for in this subsection must be filed for every crop year for which there is coverage, irrespective of whether a claim is filed for that year.

(e) Unless otherwise specified by the Deputy Administrator, appraisals are not required of crop acreage for covered tropical crops on Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(f) All crop acreage for covered tropical crops for which a notice of loss is filed must not be destroyed until authorized by CCC.

**§ 1437.505 Application for payment for the tropical region.**

(a) For producers of covered tropical crops in Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the

Republic of Palau, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.10 and 1437.504.

(b) For producers in Puerto Rico and Hawaii, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§ 1437.10 and 1437.502(i), and

(2) The date of the completion of harvest for the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

**PART 1439—EMERGENCY LIVESTOCK ASSISTANCE**

**Subpart A—General Provisions**

Sec.	
1439.1	Applicability and general statement.
1439.2	Administration.
1439.3	Definitions.
1439.4	Liens and claims of creditors.
1439.5	Assignments of payments.
1439.6	Appeals.
1439.7	Misrepresentation, scheme or device.
1439.8	Refunds to CCC; joint and several liability.
1439.9	Cumulative liability.
1439.10	Benefits limitation.
1439.11	Gross revenue limitation.
1439.12	Maintenance of books and records.

**Subpart B—2003–2004 Livestock Assistance Program**

1439.100	Administration.
1439.101	Applicability.
1439.102	Definitions.
1439.103	Eligible loss.
1439.104	Application process.
1439.105	County committee determinations of general applicability.
1439.106	Livestock producer eligibility.
1439.107	Calculation of assistance.
1439.108	Availability of funds.
1439.109	Additional limitations on payments.
1439.110	Appeals.
1439.111	Refunds to CCC; joint and several liability.
1439.112	Miscellaneous.

**Subpart C [Reserved]**

**Subpart D—Pasture Recovery Program**

1439.301	Administration.
1439.302	Definitions.
1439.303	General description.
1439.304	Eligible persons.
1439.305	Eligible land.
1439.306	Duration of contracts.

## § 1439.1

- 1439.307 Gross revenue limitation.
- 1439.308–1439.319 [Reserved]
- 1439.320 Obligations of participant.
- 1439.321 Obligations of the Commodity Credit Corporation.
- 1439.322 Eligible practices.
- 1439.323–1439.329 [Reserved]
- 1439.330 Enrollment.
- 1439.331 Termination of PRP contracts.
- 1439.332 Contract modifications.
- 1439.333–1439.339 [Reserved]
- 1439.340 Payments.
- 1439.341 Levels and rates for payments.
- 1439.342–1439.349 [Reserved]
- 1439.350 Payments to participants.
- 1439.351 Violations.
- 1439.352 Executed PRP contract not in conformity with regulations.
- 1439.353 Performance based upon advice or action of representative of the Secretary of Agriculture.
- 1439.354 Access to land under contract.
- 1439.355 Appeals.
- 1439.356 Refunds to CCC; joint and several liability.
- 1439.357 Miscellaneous.

### Subpart E [Reserved]

### Subpart F—2000 Flood Compensation Program

- 1439.501 Applicability.
- 1439.502 Administration.
- 1439.503 Definitions.
- 1439.504 Application process.
- 1439.505 County committee determinations of general applicability.
- 1439.506 Eligible land and loss criteria.
- 1439.507 Producer eligibility.
- 1439.508 Calculation of assistance.
- 1439.509 Availability of funds.

### Subpart I—American Indian Livestock Feed Program

- 1439.900 [Reserved]
- 1439.901 Applicability.
- 1439.902 Administration.
- 1439.903 Definitions.
- 1439.904 Region.
- 1439.905 Responsibilities.
- 1439.906 Program availability.
- 1439.907 Eligibility.
- 1439.908 Payment application.
- 1439.909 Payments.
- 1439.910 Program suspension and termination.
- 1439.911 Appeals.
- 1439.912 Estates, trusts, and minors.
- 1439.913 Death, incompetence, and disappearance.
- 1439.914 Violations.

AUTHORITY: 7 U.S.C. 1427a; 15 U.S.C. 714 et seq.; Sec 1103 Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat.

## 7 CFR Ch. XIV (1–1–07 Edition)

1501; Sec. 257 Pub. L. 106–224, 114 Stat. 358; Sec.'s. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549; Pub. L. 108–7, 117 Stat. 11; Sec 101 of Division B, Pub. L. 108–324, 118 Stat. 1220; Sec. 785 of Division A, Pub. L. 108–447, 118 Stat. 2809.

SOURCE: 65 FR 36567, June 8, 2000, unless otherwise noted.

### Subpart A—General Provisions

#### § 1439.1 Applicability and general statement.

(a) The regulations in this part set forth the terms and conditions applicable to programs that may be made available to livestock producers under various statutory provisions. Unless otherwise specified, the regulations in this subpart shall apply to all programs operated under this part.

(b) The regulations in this part 1439 in effect prior to March 17, 1999, (See 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) are applicable with respect to any emergency livestock assistance program that existed prior to March 17, 1999. The part 1439 regulations in effect on January 1, 2000 (See 7 CFR Parts 1200 to 1599, revised as of January 1, 2000) for the Flood Compensation Program shall continue to apply to all pending or new matters under that program.

(c) Nothing in this subpart shall be read as to require any expenditure of funds for a program in an overall amount greater than that determined to be appropriate by CCC.

#### § 1439.2 Administration.

(a) This part shall be administered by CCC through, and as delegated to the Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part that

## Commodity Credit Corporation, USDA

## § 1439.3

has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate, serves the goals of the program, and does not adversely affect the operation of the program.

### § 1439.3 Definitions.

The definitions set forth in this section shall be applicable to all subparts contained in this part unless otherwise noted, or unless the definitions conflict with the definitions in subparts other than this subpart A, in which case they shall not apply.

*Carrying capacity* means the number of acres of pasture required to provide 15.7 pounds of feed grain equivalent per day for one animal unit during the period the pasture is normally grazed.

*CCC* means the Commodity Credit Corporation.

*Deputy Administrator or DAFP* means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

*Equine animals used for food or in the production of food* means horses, mules, and donkeys that are:

(1) Used commercially for human food;

(2) Maintained for commercial sale to processors of food for human consumption; or

(3) Used in the production of food and fiber on the owner's farm, such as draft horses, or cow ponies.

*Executive Vice President* means the Executive Vice President, CCC, or a

designee of the Executive Vice President.

*FSA* means the Farm Service Agency.

*Livestock producer* means a person who is determined to receive 10 percent or more of the person's gross income, as determined by the Secretary, from the production of livestock and is:

(1) A citizen of, or legal resident alien in the United States; or

(2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States; any Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*); any Indian organization or entity chartered under the Indian Reorganization Act (25 U.S.C. 461 *et seq.*) or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 (25 U.S.C. 1451 *et seq.*).

*Natural disaster* means a generalized disease, insect infestation, flood, drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

*Person* means an individual or entity, including any organization, of any kind, provided that for per-person payment limitations the rules in part 1400 of this chapter shall be determinative in defining who is considered to be a separate person for such purposes.

*Poultry* means domesticated chickens, including egg-producing poultry, ducks, geese and turkeys.

*Secretary* means the Secretary of Agriculture or a designee of the Secretary.

*Seeded small grain forage crops* means wheat, barley, oats, rye, and triticale.

*State committee, State office, county committee, or county office*, means the respective FSA committee or office.

*United States* means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

## **§ 1439.4**

## **7 CFR Ch. XIV (1-1-07 Edition)**

### **§ 1439.4 Liens and claims of creditors.**

Any payment or benefit or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

### **§ 1439.5 Assignments of payments.**

Payments that are earned by a person under this part may be assigned in accordance with the provisions of part 1404 of this chapter and the applicable FSA or CCC forms for assignments.

### **§ 1439.6 Appeals.**

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 780 and 11 of this title.

### **§ 1439.7 Misrepresentation, scheme or device.**

A person shall be ineligible to receive assistance under any program under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the State committee or the county committee or an official of FSA that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(b) Made any fraudulent representation with respect to such program; or

(c) Misrepresented any fact affecting a program determination.

### **§ 1439.8 Refunds to CCC; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

### **§ 1439.9 Cumulative liability.**

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising

## Commodity Credit Corporation, USDA

## § 1439.100

in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

### § 1439.10 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1400 of this chapter, shall be entitled to receive under any subpart may not exceed \$40,000 for any one loss or year. Also, the Deputy Administrator may take such action as needed, whether or not specifically provided for, to avoid a duplication of benefits under the several programs provided for in this part and may impose such cross-program payment limitations as may be consistent with the intent of this section and this part.

### § 1439.11 Gross revenue limitation.

A person, as defined in part 1400 of this chapter, who has annual gross revenue in excess of \$2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

### § 1439.12 Maintenance of books and records.

Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain financial books and records that will permit verification of all transactions with respect to the provisions of this part for at least 3 years following the end of the calendar year in which assistance was provided, or for such additional period as CCC may request. Destruction of records after that date shall be at the risk of the producer or other person receiving assistance. An examination of such books and records by a duly authorized

representative of the United States Government shall be permitted at any time during business hours.

## Subpart B—2003–2004 Livestock Assistance Program

SOURCE: 70 FR 16394, Mar. 31, 2005, unless otherwise noted.

### § 1439.100 Administration.

(a) The regulations in this subpart provide for what will be referred to as the 2003/2004 Livestock Assistance Program (LAP) which will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by FSA State and county committees.

(b) The FSA State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The FSA State committee may take any action authorized or required by this part to be taken by the FSA county committee that has not been taken by such committee, such as:

(1) Correct or require a FSA county committee to correct any action taken by such committee that is not in accordance with this part; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to an FSA State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by an FSA State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the 2003/2004 LAP is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

## § 1439.101

## 7 CFR Ch. XIV (1–1–07 Edition)

### § 1439.101 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to the 2003/2004 LAP authorized by Public Law 108–324. Program regulations for prior livestock assistance programs can be found at 7 CFR 1439 as it was published on January 1, 2001, January 1, 2002, and January 1, 2004. Benefits will be provided to eligible livestock producers in the United States under this subpart in declared disaster counties that were subsequently approved for relief under this part by the Deputy Administrator.

(b) Unless otherwise determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

### § 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart, in which case the definitions in this section will apply.

*Application* means the Livestock Assistance Program Application. The Application is available at FSA county offices.

*Disaster county* means a county included in the geographic area covered by a qualifying natural disaster declaration approved in calendar year 2003 or calendar year 2004, with respect to losses which occurred no earlier than January 1, 2003, and no later than December 31, 2004. The eligible disaster county is only the primary county where the disaster occurred and does not include a contiguous county which is not itself a disaster county.

*Eligible livestock* means only those animals produced specifically for food for human consumption, or used directly for the production of food for human consumption, or for the production of fiber, as determined by the Deputy Administrator, and includes beef and dairy cattle, buffalo, and beefalo, maintained on the same basis as beef cattle, equine animals, sheep, goats, swine, elk, and reindeer. Animals maintained for recreational purposes,

hunting, or for show, are not eligible under any circumstances.

*Production year* means calendar year.

*Qualifying natural disaster declaration* means:

(1) A natural disaster declared by the Secretary under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or

(2) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

[70 FR 16394, Mar. 31, 2005, as amended at 71 FR 10831, Mar. 3, 2006]

### § 1439.103 Eligible loss.

(a) To be eligible for 2003/2004 LAP, for losses during the 2003 or 2004 calendar years, a producer must have owned or leased grazing land within the physical boundary of a disaster county that was approved as a primary county under a Secretarial disaster designation or Presidential disaster declaration in 2003 or 2004, or approved as a primary county after December 31, 2004, for qualifying losses that occurred prior to January 1, 2005 (That is, losses in 2003 and 2004).

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production in an eligible county equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the 2003 or 2004 production year as defined in § 1439.102.

(c)(1) Producers in counties contiguous to an eligible county that were not designated as a disaster county in their own right will not receive benefits under this subpart.

(2) Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, land seeded to small grain forage crops.

(d) The percentage of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the FSA county committee and not be greater than 80 percent; and

(e) The FSA county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP normal grazing period, whether more than the normal acreage of grazing land was required to support livestock during the LAP normal grazing period, and whether supplemental feeding of livestock began earlier or later than normal. The FSA county committee shall request the producer to provide proof of loss of grazing production if the FSA county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(f) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the FSA county committee in accordance with §1439.105(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

#### **§ 1439.104 Application process.**

(a) Livestock producers must submit a completed application prior to the close of business on the date established and announced by the Deputy Administrator. The application and any other supporting documentation shall be submitted to the FSA county office with administrative authority over a producer's eligible grazing land or to the FSA county office that maintains the farm records for the livestock producer. A producer may submit an application for both 2003 and 2004 losses, as applicable; however, LAP assistance to the producer under this subpart shall be provided only for one of the years 2003 or 2004.

(b) A producer shall specify each type of pasture and percentage of loss suffered by each type within the approved county on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP normal grazing period, whether more than the normal acreage of grazing land was required to support livestock during the LAP normal grazing period, and whether supplemental feed-

ing of livestock began earlier or later than normal.

(c) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information that CCC determines to be necessary to determine the livestock producer's eligibility.

#### **§ 1439.105 County committee determinations of general applicability.**

(a) FSA county committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during LAP crop year during calendar year 2003 for 2003 eligibility and during calendar year 2004 for 2004 eligibility. In making this determination, FSA county committees, using the best information available from sources including but not limited to: The Extension Service, the Natural Resources Conservation Service; the Drought Monitor; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county-wide basis. The FSA county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, to the FSA State committee for concurrence. The maximum grazing losses the FSA county committees shall submit is 80 percent. These determinations shall be subject to review by the Deputy Administrator. For purposes of this subpart, such counties are called "eligible counties."

(b) In each eligible county, the FSA county committee shall determine a LAP normal grazing period. The LAP normal grazing period shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) For each eligible county, the FSA county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP normal grazing period. The normal carrying capacity for the LAP normal grazing period shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP normal grazing period if a natural disaster had not diminished the production of these grazing crops.

(d) For each eligible county, the FSA county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months, as applicable, during 2003 or 2004, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

(e) Conservation Reserve Program acres released for haying or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

**§ 1439.106 Livestock producer eligibility.**

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners, cash or share lessees, or contractors of livestock who themselves provide the pasture or grazing land, including cash-leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner, or cash or share lessee, or contractor of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be a livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased or being purchased under a contractual agreement that

has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned or leased by the producer for at least 3 months before becoming eligible for generating a payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

(g) Livestock sold due to disaster conditions by an eligible producer shall be considered as eligible to generate assistance and may be included in making the calculations in § 1439.107(a).

**§ 1439.107 Calculation of assistance.**

(a) The gross value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned, leased, contracted, or sold according to § 1439.106 by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn, (\$0.0369642 per pound for 2003, or \$0.0344642 for 2004); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period

## Commodity Credit Corporation, USDA

## § 1439.111

as certified by the producer and approved by the FSA county committee in accordance with §1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying:

(2) The result of paragraph (c)(1) of this section for each pasture type; by \$0.5803379 for 2003 ( $\$0.0369642 \times 15.7$ ) or \$0.5410879 for 2004 ( $\$0.0344642 \times 15.7$ ) by:

(3) The applicable number of days in the LAP payment period; by

(4) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the FSA county committee in accordance with §1439.105.

(d) The final payment shall not exceed 50 percent of the smaller amount calculated under paragraphs (b) or (c) of this section.

(e) If the livestock owner is eligible for the LAP program and the American Indian Livestock Feed Program (AILFP) with respect to the same natural disaster, the livestock owner may elect to receive payment only for the same year for both programs, either 2003 or 2004. Payments for both programs cannot be issued for different years to the same producer.

(f) Land seeded to small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(g) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or breed horses and mules used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or other non-covered purposes are running wild or uncontrolled on land owned or leased by the owner.

[70 FR 16394, Mar. 31, 2005, as amended at 70 FR 29922, May 25, 2005]

### § 1439.108 Availability of funds.

Subject to the availability of funds, the Secretary shall use such sums as

are necessary of funds of the Commodity Credit Corporation to make and administer payments to livestock producers for 2003 or 2004 grazing losses. Such payment shall be made after the imposition of applicable payment limitation provisions.

### § 1439.109 Additional limitations on payments.

(a) Sections 1439.10 and 1439.11 as in effect at the time of publication of this subpart shall apply to the 2003/2004 LAP and shall limit payments accordingly.

(b) Any person who received payments from section 32 of the Act of August 25, 1935, with respect to 2004 hurricane losses is not eligible for payments under this subpart.

### § 1439.110 Appeals.

Determinations made under this subpart are subject to reconsideration or appeal in accordance with parts 780 and 11 of this title.

### § 1439.111 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All signatories on a LAP application with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund including related charges that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the

date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional action on the part of the owner or other individual or entity, as determined by CCC.

(e) Late-payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be re-computed and any excess refunded with applicable interest.

**§ 1439.112 Miscellaneous.**

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, CCC may waive a demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to, provisions concerning misrepresentations, payment limitations, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition, other parts of this chapter and of

chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) Nothing in this subpart shall require a commitment of funds in excess of that determined to be appropriate by the Deputy Administrator or CCC.

(f) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

(g) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(h) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by April 14, 2005, the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(i) Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain records that will permit verification of livestock and grazing for at least 3 years following the end of the calendar year in which payment was made, or for such additional period as CCC may request. An examination of such records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

(j) A person shall be ineligible to receive assistance under 2003/2004 LAP and be subject to such other remedies as may be allowed by law, if, with respect to the 2003/2004 LAP, it is determined by the FSA State or county committee or an official of FSA that such person has:

## Commodity Credit Corporation, USDA

## § 1439.302

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

[70 FR 16394, Mar. 31, 2005, as amended at 70 FR 29922, May 25, 2005]

### Subpart C [Reserved]

### Subpart D—Pasture Recovery Program

SOURCE: 66 FR 15544, Mar. 19, 2001, unless otherwise noted.

#### § 1439.301 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Deputy Administrator, for Farm Programs, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (“State committees” and “county committees”, respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the Pasture Recovery Program (PRP) is voluntary, program benefits will not be provided unless the participant furnishes the appropriate data.

#### § 1439.302 Definitions.

The following definitions shall be applicable to this subpart:

*Applicant* means, unless the context indicates otherwise, the owner or operator.

*Contract period* means the period of time the PRP contract is in effect.

*Equine animals* means horses, mules, and donkeys.

*Federally-owned land* means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

*Forage crop* means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

*FSA* means the Farm Service Agency.

*Hayland* means land that was or has been routinely used to produce hay.

*Livestock* means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

*Local FSA office* means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

*Operator* means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

*Owner* means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

### § 1439.303

*Participant* means an owner or operator or tenant who has entered into a PRP contract.

*Pasture land* means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

*Payment* means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

*Practice* means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by natural disaster, as determined by CCC.

*Rangeland* means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

*Secretary* means the Secretary of Agriculture or a designee of the Secretary.

*State committee, State office, county committee, or county office*, means the respective FSA committee or office.

*State Technical Committee* means that committee established pursuant to 16 U.S.C. 3861.

*State-owned land* means land owned by a State Government or any department, bureau, or agency thereof, including political subdivisions of a State, as determined by CCC.

*Technical assistance* means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

*United States* means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

### § 1439.303 General description.

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or

### 7 CFR Ch. XIV (1-1-07 Edition)

destroyed pasture land to an approved forage crop upon a promise and obligation to maintain the new crop for 3 full years after the calendar year of installation.

### § 1439.304 Eligible persons.

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by natural disaster during calendar year 2000 and:

(a) Must normally graze livestock on such pasture land; and

(b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

### § 1439.305 Eligible land.

(a) Except as otherwise provided in this section, land in the PRP must be pastureland that:

(1) As determined by CCC, is located within a county that was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 2000 natural disaster, or was later approved for such participation based upon an application filed by such date as is determined and announced by the Deputy Administrator and based upon natural disaster damage suffered in 2000.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by natural disaster in calendar year 2000 that the forage crop will not return in the 2001 grazing year, and seeding is required to reestablish the forage crop, as determined by CCC.

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC, shall be ineligible for enrollment if the pasture land is:

(1) Federal-operated land;

(2) State-operated land;

(3) Hayland; or

(4) Rangeland, as determined by the CCC.

## Commodity Credit Corporation, USDA

## § 1439.331

### § 1439.306 Duration of contracts.

Contracts under this subpart and their forage crop maintenance requirements shall be for three years. The installation of the practice must be completed no later than the date specified in the PRP contract.

### § 1439.307 Gross revenue limitation.

A person, as determined in accordance with part 1400 of this chapter, who has annual gross revenue in excess of \$2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

### §§ 1439.308–1439.319 [Reserved]

### § 1439.320 Obligations of participant.

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(d) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(e) Not harvest the re-seeded cover crop at any time during the contract period; and

(f) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part

and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

### § 1439.321 Obligations of the Commodity Credit Corporation.

CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

### § 1439.322 Eligible practices.

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively reestablish the approved forage crop, as determined by CCC, on acreage subject to the contract, including reseeding.

### §§ 1439.323–1439.329 [Reserved]

### § 1439.330 Enrollment.

Only applications for contracts submitted by a participant at the FSA office responsible for administering CCC programs in the county where the participant's farm is located during designated signup periods, as announced by CCC, will be approved.

### § 1439.331 Termination of PRP contracts.

(a) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

## **§ 1439.332**

(4) The same acreage is later enrolled in another State, Federal, or local conservation program;

(5) The PRP practice fails and CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(b) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract.

### **§ 1439.332 Contract modifications.**

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decrease acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by CCC.

### **§§ 1439.333–1439.339 [Reserved]**

### **§ 1439.340 Payments.**

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Payments shall be made in such amount and in accordance with a schedule specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed \$2,500. The regulations set forth at part 1400 of this

## **7 CFR Ch. XIV (1–1–07 Edition)**

chapter shall be applicable in making certain eligibility and “person” determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

### **§ 1439.341 Levels and rates for payments.**

(a) CCC shall pay not more than 65 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed \$100 per acre without approval of the Deputy Administrator. In no case shall a payment exceed \$125 per acre.

### **§§ 1439.342–1439.349 [Reserved]**

### **§ 1439.350 Payments to participants.**

Payments shall be made to the participants responsible for the establishment of the practice.

### **§ 1439.351 Violations.**

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

### **§ 1439.352 Executed PRP contract not in conformity with regulations.**

If, after a PRP contract is approved by CCC, CCC discovers that the PRP

contract is not in conformity with the provisions of this part, the provisions of the regulations in this part shall prevail and the contract may be terminated.

**§ 1439.353 Performance based upon advice or action of representative of the Secretary of Agriculture.**

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Secretary of Agriculture shall be applicable to this part.

**§ 1439.354 Access to land under contract.**

(a) The applicant or participant shall, as requested, provide all representatives or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

**§ 1439.355 Appeals.**

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 780 and 11 of this title.

**§ 1439.356 Refunds to CCC; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recomputed and any excess refunded with applicable interest.

**§ 1439.357 Miscellaneous.**

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not

limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, CCC may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition, other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance may the amount expended under this subpart exceed \$39.912 million.

(i) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this

chapter shall be applicable to PRP contract payments.

(j) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

(k) In those instances in which, prior to the March 14, 2001 effective date of this subpart, a producer has signed a power of attorney on an approved FSA-211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by April 2, 2001 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(l) Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain records that will permit verification of PRP practice completion for at least 3 years following the end of the calendar year in which payment was made, or for such additional period as CCC may request. An examination of such records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

(m) A person shall be ineligible to receive assistance under PRP and be subject to such other remedies as may be allowed by law, if, with respect to the PRP, it is determined by the State committee or the county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

### Subpart E [Reserved]

### Subpart F—2000 Flood Compensation Act

SOURCE: 65 FR 65716, Nov. 2, 2000, unless otherwise noted.

**§ 1439.501 Applicability.**

This subpart sets forth the terms and conditions applicable to the 2000 Flood Compensation Program (FCP). Benefits will be provided to eligible producers in the United States but only in counties approved under the 1998 FCP (provided for in regulations of this part contained in the 7 CFR, parts 1200 to 1599, edition revised as of January 1, 2000), where long-term flooding occurred, and that were subsequently approved by the Deputy Administrator for Farm Programs as eligible counties.

**§ 1439.502 Administration.**

This subpart shall be administered as set forth in § 1439.2, except as provided for in this subpart.

**§ 1439.503 Definitions.**

Except as otherwise indicated, terms in this part shall have the same meanings as those defined in 7 CFR 1439.3 and 718.2. To the extent that the definitions in this section differ from the definitions in 7 CFR 1439.3 and 718.2, the definitions in this section apply rather than the definitions in 7 CFR 1439.3 and 718.2.

*Application* means the Form CCC-454, Flood Compensation Program Application. The CCC-454 is available at county FSA offices.

*Covered land* means:

(1) Land that:

(i) Was unusable for agricultural production during 2000 crop year as the result of flooding;

(ii) Was used for agricultural production during at least 1 of the 1992 through 1999 crop years;

(iii) Is a contiguous parcel of land of at least 1 acre;

(iv) Is located in a county in which producers were eligible for assistance under the 1998 Flood Compensation Program;

(v) Was not planted during FY 2000; and

(vi) Meets all other conditions of eligibility.

(2) The term "covered land" excludes any land with respect to which a producer is insured, enrolled, or assisted during the 2000 crop year under:

(i) A policy or plan of insurance authorized under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*);

(ii) The noninsured crop assistance program operated under section 196 of the Agricultural Market Transition Act (7 U.S.C. 7333);

(iii) Any crop disaster program established for the 2000 crop year;

(iv) The conservation reserve program established under subchapter B of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3831 *et seq.*);

(v) The wetlands reserve program established under subchapter C of chapter 1 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3837 *et seq.*);

(vi) Any emergency watershed protection program or Federal easement program that prohibits crop production or grazing; or

(vii) Any other Federal or State water storage program, as determined by the Secretary.

*FCP* means the Flood Compensation Program provided for in this part.

*FY 2000* means the period from October 1, 1999 through September 30, 2000.

*NASS* means The National Agricultural Statistics Service.

**§ 1439.504 Application process.**

(a) Producers must submit a completed application prior to the close of business on December 15, 2000, or other such later date as established and announced by the Deputy Administrator. The application and any supporting documentation shall be submitted to the FSA county office with administrative authority over a producer's eligible flooded land or to the FSA county office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the FSA county office or FSA Committee deems necessary to determine the producer's eligibility.

**§ 1439.505 County committee determinations of general applicability.**

(a) FSA county committees shall determine whether that county was determined eligible under the 1998 FCP, and whether the land has been unusable from October 1, 1999 through September 30, 2000 due to continuing flooding. In making this determination, the FSA county committee shall use what

it considers to be the best information available including but not limited to: Cooperative State Research, Education, and Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(b) With respect to each eligible county, the FSA county committee for that county shall establish a separate payment rate for crop-land and pasture-land. These rates shall be reviewed by the FSA state committee and shall be equal to the average rental rate for the years 1996 through 2000 for all such land of each type in the county. Where these rates cannot be set in the manner provided for in paragraph (c) of this section, the FSA state committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (c) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(c) Except as provided by the Deputy Administrator, rental rates shall be equal to the applicable county average for the kind of land involved using established NASS data in all locations where NASS has established rental rates on a county-by-county basis for 2000.

**§ 1439.506 Eligible land and loss criteria.**

(a) The flooded land for which a producer requests benefits must be within the physical boundary of an eligible county. Producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a producer in an eligible county must have land in a county which is eligible for payment. Such land, to be eligible for payment must meet all of the following criteria:

(1) The land is cropland or pasture land used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in one or more years during the period beginning October 1, 1991, through September 30, 1999;

(2) The land is inaccessible or unable to be used for crop production, grazing, or haying because of flooding or excess moisture during all of the period beginning October 1, 1999, through September 30, 2000 unless some other period is established as the 2000-crop year for the commodity by the Deputy Administrator;

(3) The land was not used for planting during October 1, 1999, through September 30, 2000;

(4) The land has been owned, leased or under a binding cash lease by the producer continuously since October 1, 1999;

(5) The land is a contiguous parcel of land with an area equal to one acre or more;

(6) The land was not, except as determined by the Deputy Administrator, the subject of, nor will be the subject of, any other federal payment for activities or lack of activity during the period October 1, 1999, through September 30, 2000, whether or not disaster-related, with the exception of the production flexibility contract (PFC) program payments received under 7 CFR part 1412. This prohibition includes but is not limited to other payments under this part, or payments under the Conservation Reserve Program (7 CFR part 1410), the Wetlands Reserve Program (7 CFR part 1467), any Emergency Watershed Protection Program, or Federal Easement Program.

(c) On Form CCC-454 producers shall be required to certify by tract on each farm the number of flooded cropland and non-cropland acres for the farm in 2000 and the number of flooded cropland and non-cropland acres in 1992. To establish the acreage eligible for payment, flooded land certified for 1992 for each type shall be subtracted from the flooded land certified for 2000 for the applicable type. The difference will be the acreages of cropland and non-cropland subject to flooding and eligible for FCP payment, except that the difference may be adjusted as needed to ensure, to the extent practicable, an accurate estimate of the net increased flooding on the farm after October 1, 1993.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart

## Commodity Credit Corporation, USDA

## § 1439.901

are subject to approval by the county committee.

(e) The FSA county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

### § 1439.507 Producer eligibility.

(a) Payments under this subpart shall be subject to the provisions of § 1439.1 through § 1439.12, except as otherwise provided in this subpart.

(b) No person (as defined and determined under 7 CFR part 1400) may receive more than \$40,000 under this subpart.

(c) No person (as defined and determined under 7 CFR part 1400) will be eligible for payment under this subpart if that person's annual gross receipts for calendar year 1999 were in excess of \$2.5 million. That determination shall be made in the manner provided for in § 1439.11.

(d) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of 7 CFR 1400.501 and 1400.502.

### § 1439.508 Calculation of assistance.

(a) The unadjusted value of FCP assistance determined with respect to the flooded land in an eligible county for each producer shall not exceed the amount obtained by adding the amounts in paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland which is determined, consistent with this subpart, to be eligible land for the payment purposes, the established local payment rate for cropland will be multiplied by the number of acres determined to be qualifying acres, as determined by the County Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying non-cropland acres consistent with this subpart, as determined by the county

committee in accordance with instructions of the Deputy Administrator, the acres will be multiplied by the established payment rate for non-cropland acres.

(d) Payments will be adjusted as determined necessary to comply with other provisions of this subpart such as those set in § 1439.509.

### § 1439.509 Availability of funds.

In the event that the total amount of claims submitted under this subpart exceeds the \$24 million authorized for FCP by Public Law 106-224, each payment to a producer shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions.

## Subpart I—American Indian Livestock Feed Program

SOURCE: 70 FR 29922, May 25, 2005, unless otherwise noted.

### § 1439.900 [Reserved]

### § 1439.901 Applicability.

This subpart sets forth, subject to the availability of funds, the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). Assistance will be available in those regions that Commodity Credit Corporation (CCC) determines have been affected by natural disaster and are located in a primary county or counties that have received a Presidential declaration or Secretarial emergency designation issued on or after January 1, 2003, for eligible losses in 2003 or 2004. Eligible producers may receive benefits for 2003 losses, or 2004 losses, but not both. Eligible areas will only include those where a determination is made by the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) (Deputy Administrator) that a livestock feed emergency exists on tribal-governed land. Contiguous counties that were not designated as a primary disaster county in their own right will not be eligible for participation for 2003

or 2004 losses under this subpart. Payments may become available as contracts with tribal governments are approved. Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program. Payments will terminate when the specified deadline has been reached, when a tribal government requests termination, or when there is a program violation or a violation of a contract related to the program irrespective of whether the violation involves the current operation of the program for other periods of time.

**§ 1439.902 Administration.**

(a) This subpart will be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs. This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where the applicant or tribe, as applicable, shows that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), and FSA State and county committees, recommend the geographical size and shape of the region which will

be considered to be eligible to be considered the region where the natural disaster has occurred and where all eligibility conditions are met. Such region must consist solely of tribal-governed land and be located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation. Regional eligibilities will be effective only upon the Deputy Administrator's approval in writing and continued approval thereafter.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) Subject to review by the Deputy Administrator, the FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) Except as otherwise declared by the Deputy Administrator, Subpart A shall not apply to this subpart, except §§ 1439.3 through 1439.10, and 1439.12.

(j) No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or employee of the Department of Agriculture.

**§ 1439.903 Definitions.**

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

*Approving official* means a representative of the tribal government who is authorized to approve an application

for assistance made in accordance with this subpart.

*Carrying capacity* means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

*Dependent Indian community* means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

*Disaster period* means the length of time that damaging weather, adverse natural occurrence, or related condition had a detrimental affect on the production of livestock feed.

*Eligible feed for assistance* means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy requirements, is consistent with acceptable feeding practices, and was not produced by the owner.

*Eligible livestock* means only those animals produced specifically for food for human consumption, or used directly for the production of food for human consumption, or for the production of fiber, as determined by the Deputy Administrator, and includes beef and dairy cattle, buffalo, and beefalo, maintained on the same basis as beef cattle, equine animals, sheep, goats, swine, elk, and reindeer. Animals maintained for recreational purposes, hunting, or for show, are not eligible under any circumstances.

*Eligible owner* means an individual or entity, including a tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in §1439.907, and elsewhere in this part; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

*Livestock feed crop year* means a period of time beginning on the date grazing first becomes available in each county, as established by each State Committee, and ending one year later.

*Livestock feed emergency* means a situation in which a natural disaster causes more than a 35-percent reduction in the feed produced in a region, determined in accordance with §1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

*Natural disaster* means damaging weather, including but not limited to: drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

*Region* means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with §1439.904.

*Tribal governed land* means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village, or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act, or other Act relating to Alaska Natives.

*Tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

**§ 1439.904**

**7 CFR Ch. XIV (1-1-07 Edition)**

*Type and weight range* means the weight range by type of livestock; provided further that for purposes of calculations of payment eligibility under this subpart, as provided for in this subpart, such livestock shall be considered to have the following daily feed need expressed in pounds of corn per head per day:

Category	Weight range	Pounds of corn per head, per day
<b>Type—Beef Cattle (Buffalo/Beefalo):</b>		
Beef .....	Under 400 .....	3.5
Beef .....	400–799 .....	6.5
Beef .....	800–1099 .....	8.5
Beef .....	1100+ .....	12.5
Beef, Cow .....	All .....	15.7
Beef, Bull .....	1000+ .....	13.0
<b>Type—Dairy Cattle:</b>		
Dairy .....	Under 400 .....	3.5
Dairy .....	400–799 .....	6.5
Dairy .....	800–1099 .....	8.5
Dairy .....	1100+ .....	12.5
Dairy, Cow .....	Under 1100 .....	27.0
Dairy, Cow .....	1100–1299 .....	31.0
Dairy, Cow .....	1300–1499 .....	33.0
Dairy, Cow .....	1500+ .....	34.5
Dairy, Bull .....	1000+ .....	14.5
<b>Type—Swine:</b>		
Swine .....	Under 45 .....	0.5
Swine .....	45–124 .....	1.1
Swine .....	125+ .....	1.9
Swine, Sow .....	235+ .....	6.5
Swine, Boar .....	235+ .....	3.7
<b>Type—Sheep:</b>		
Sheep .....	Under 44 .....	0.4
Sheep .....	44–82 .....	0.9
Sheep .....	83+ .....	1.1
Sheep, Ewe .....	150+ .....	3.1
Sheep, Ram .....	150+ .....	1.7
<b>Type—Goats:</b>		
Goats .....	Under 44 .....	0.5
Goats .....	44–82 .....	1.1
Goats .....	83+ .....	1.5
Goats, Doe .....	125+ .....	3.5
Goats, Doe (Dairy) .....	125+ .....	5.2
Goats, Buck .....	125+ .....	2.1
<b>Type—Equine:</b>		
Equine .....	Under 450 .....	4.4
Equine .....	450–649 .....	6.3
Equine .....	650–874 .....	8.2
Equine .....	875+ .....	11.6
<b>Type—Reindeer:</b>		
All .....	Under 400 .....	3.5
<b>Type—Elk</b>		
Elk .....	Under 400 .....	3.5
Elk, Cow .....	400–799 .....	6.5
Elk, Bull .....	800–1099 .....	8.5

[70 FR 16394, Mar. 31, 2005, as amended at 71 FR 10831, Mar. 3, 10831]

**§ 1439.904 Region.**

In order for a region to be eligible to generate benefits under this subpart, the region must:

(a) Be located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation;

(b) Be tribal-governed land physically located within the primary disaster designated county; and

(c) Have suffered a livestock feed emergency as defined in § 1439.903.

**§ 1439.905 Responsibilities.**

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Submitting a contract to participate in the AILFP based on the tribes' voluntary decisions that participation will benefit all livestock owners using tribal governed land;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(5) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

## Commodity Credit Corporation, USDA

## § 1439.907

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

### § 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency existed in calendar year 2003 or 2004 on tribal governed land due to a natural disaster, the tribal government may contact the applicable State FSA office to determine if their tribal governed land is located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation made after January 1, 2003, with respect to losses in 2003 or 2004. After a Presidential or Secretarial emergency designation has been confirmed, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of July 25, 2005, or 60 days after the end of the disaster period, whichever is later, as specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed Contract to Participate form; and

(2) A completed Region Designation and Feed Loss Assessment form; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated in accordance with § 1439.904;

(ii) Historical production data and estimated or actual production data for the disaster year; and

(iii) Climatological data provided by the State FSA office.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency existed not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and FSA State office of such determination as applicable. Approvals will be made on the basis of a Presidential or Secretarial emergency designation for the primary county or counties named in the contract, and whether the requisite 35 percent loss on tribal governed land in that county or counties can be substantiated by supporting documenta-

tion, and other conditions as required by this subpart, other regulations, the Deputy Administrator, or CCC.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency ceased to exist.

(e) The tribal government may request multiple feeding periods for up to three additional 90-day periods in a livestock feed crop year if disaster conditions did not diminish significantly and a livestock feed emergency continued and other conditions for payment are met.

(f) Tribal governments shall submit separate contracts for disasters occurring in both 2003 and 2004 calendar years; however, livestock owners shall elect only one of those years to receive benefits.

### § 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior to the beginning of the feeding period made under this subpart shall be considered as being owned by the lessee for that part of the feeding period in which the lease was in effect but only if the lease:

(1) Required the lessee for the full lease period to furnish the feed for such livestock; and

(2) Provided for a substantial interest, as determined by the Deputy Administrator, in such livestock in the lessee, such as the right to market a substantial share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application. When such a payment application is

## § 1439.908

## 7 CFR Ch. XIV (1-1-07 Edition)

filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal-governed land in the approved delineated region, and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

### § 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the FSA county office where the tribal-governed land is administered, or to the tribal government, by the owner no later than a date announced by the tribe, such date being no later than the applicable date established in §1439.907(c);

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC;

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in the AILFP Payment Application, (Form CCC-644 or any replacement form) and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and

(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in para-

graphs (c) and (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal-owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal-owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

### § 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met, all

eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application and this part.

(d) Owners may file applications for more than one feeding period relating to losses occurring within the same year, either 2003 or 2004, but those years only, and in no case may a person receive payment for losses under this subpart for both 2003 and 2004. That is, eligible persons may receive benefits for one of those livestock feed crop years, but not both. CCC shall provide assistance equal to the amount of benefits determined for the owner for the feeding periods that the owner is eligible to receive benefits.

(e) The failure of any contact person to file the necessary receipts or sales documents showing that the terms and conditions of this part and the contract have been met shall render all of the persons ineligible for any payments and benefits under the contract including any payments previously made. Payments shall be refunded to CCC with interest, if applicable, as determined under § 1439.8.

(f) If the livestock owner is eligible for the AILFP and the Livestock Assistance Program (LAP), the livestock owner must elect to receive payment for the same year for all farms for both programs, either 2003 or 2004.

(g) Persons that received payments from Section 32 of the Act of August 24, 1935, with respect to 2004 hurricane losses are not eligible for payments under this subpart.

(h) Subject to such other limitations as may apply including those in § 1439.909(i), the amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased during the relevant eligible feeding period for the days for which such assistance is allowed (as documented by acceptable purchase receipts), less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the eligible feeding period; or

(2) Subject to adjustments, conditions, and deductions as otherwise may be provided for in this part, including, but not limited to those in paragraph (i) of this section, 30 percent of the amount computed by multiplying:

(i) The amount of the estimated daily feed need, expressed as pounds of corn, for the relevant type and weight range of the livestock using the table contained in the "type and weight range" definition contained in § 1439.3, or some alternative table chosen by the Deputy Administrator, by

(ii) The number of days the eligible owners of the livestock provided feed to the eligible livestock during the eligible days of the eligible feeding period;

(iii) A corn price, per pound of corn, which price shall be \$0.0369642 for 2003 losses, and \$0.0344642 for 2004 losses unless some alternative pricing shall be chosen by the Deputy Administrator (provided further, however, that after the completion of this multiplication, the claim amount shall be reduced by the dollar amount of any sale of livestock feed whether purchased or produced by the owner during the feeding period.

(3) For purposes of the calculation required by paragraph (h)(2) of this section, the number of livestock during the livestock feed crop year on which the claim is calculated, the Deputy Administrator can include, if all other conditions are met, livestock sold as a result of the natural disaster but only subject to such conditions as may be approved by the Deputy Administrator.

#### **§ 1439.910 Program suspension and termination.**

(a) The tribal government that requested the AILFP assistance may, at any time during the operation of a program, recommend suspension or termination of the program.

## § 1439.911

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) The Deputy Administrator determines a tribal government is not following program provisions when administering the program.

### § 1439.911 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

### § 1439.912 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

### § 1439.913 Death, incompetence, and disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

### § 1439.914 Violations.

(a) If the owner has failed to utilize the entire quantity of livestock feed

## 7 CFR Ch. XIV (1-1-07 Edition)

purchased under the terms and conditions of the application for assistance and contract of these programs, the owner shall not dispose of any remaining quantity of such livestock feed except as specified by CCC.

(b) Fraudulent representations by any warehouseman, handler, dealer, or any other person may result in the person being suspended from participation in a program in accordance with part 1407 of this chapter if such person has:

(1) Made a false certification, representation or report in accordance with this subpart; or

(2) Otherwise failed to comply with any provisions of this part or any contracts entered into in accordance with this part. The making of such fraudulent representations shall make such person liable in accordance with applicable State and Federal criminal and civil statutes.

## PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

### Subpart A—Tobacco Transition Assessments

Sec.

1463.1 General.

1463.2 Administration.

1463.3 Definitions.

1463.4 National assessment.

1463.5 Division of national assessment among classes of tobacco.

1463.6 Determination of persons liable for payment of assessments.

1463.7 Division of class assessment to individual entities.

1463.8 Notification of assessments.

1463.9 Payment of assessments.

1463.10 Civil penalties and criminal penalties.

1463.11 Appeals and judicial review.

### Subpart B—Tobacco Transition Payment Program

1463.100 General.

1463.101 Administration.

1463.102 Definitions.

1463.103 Eligible quota holder.

1463.104 Eligible tobacco producer.

1463.105 Base quota levels for eligible quota holders.

1463.106 Base quota levels for eligible tobacco producers.

1463.107 Payment to eligible quota holders.

1463.108 Payment to eligible tobacco producers.

1463.109 Contracts.